

## THIRD DIVISION

[ G.R. No. 181480, January 30, 2009 ]

**JOSEFINA CADA, PETITIONER, VS. TIME SAVER  
LAUNDRY/LESLIE PEREZ, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari* under Rule 45<sup>[1]</sup> of the Revised Rules of Court filed by petitioner Josefina Cada assailing the Decision<sup>[2]</sup> of the Court of Appeals dated 17 December 2007 in CA-G.R. SP No. 94616, which declared the Resolutions dated 30 November 2004<sup>[3]</sup> and 28 February 2006 of the National Labor Relations Commission (NLRC)<sup>[4]</sup> as null and void on the ground of lack of proper service of summons on respondent Leslie Perez (Perez). In its Resolution dated 30 November 2004, the NLRC affirmed<sup>[5]</sup> the Decision<sup>[6]</sup> dated 16 March 2004 of the Labor Arbiter in NLRC-NCR Case No. 05-06071-03 in finding that petitioner Josefina Cada was illegally dismissed by respondents Perez and Time Saver Laundry (TSL).

The Petition at bar stemmed from a Complaint<sup>[7]</sup> dated 21 May 2003 filed before the NLRC by petitioner against respondents for illegal dismissal, underpayment of salary, nonpayment of overtime pay, holiday pay, premium pay for holiday and rest day pay, service incentive leave pay, 13<sup>th</sup> month pay, ECOLA, separation pay and attorney's fees. The Complaint was docketed as NLRC-NCR Case No. 05-06071-03.

Respondent TSL is a sole proprietorship engaged in the laundry business. Respondent Perez is the owner/proprietor of TSL.<sup>[8]</sup>

Petitioner alleged that she was employed by the respondents on 28 September 2002 as Presser, receiving a salary of P220.00 per day. She worked for 12 hours a day, from 9:00 a.m. to 9:00 p.m., but she was not paid overtime pay. She also did not receive holiday pay, premium pay for holidays and rest days, 5 days service incentive leave pay (SILP), and 13<sup>th</sup> month pay. While she was working on 7 May 2003, the management called her attention for quarreling with her co-employee. Without giving her an opportunity to explain and defend her side, petitioner was sent home and prevented to work further, compelling her to file the Complaint for illegal dismissal against respondents.

Respondents failed to appear for the entire proceedings before the Labor Arbiter. The Labor Arbiter heard the case *ex parte* directing the petitioner to file her position paper.<sup>[9]</sup> On the basis of the petitioner's position paper, the case was submitted for decision.

In its Decision dated 16 March 2004, the Labor Arbiter ruled:

WHEREFORE, finding complainant to have been illegally dismissed, she is entitled to payment of separation pay in lieu of reinstatement as aforesated and backwages. Accordingly, respondents Time Saver Laundry and Leslie Perez are hereby ordered to pay complainant the following:

1. P 7,280.00 - separation pay
2. P80,563.17 - backwages from May 7, 2003 to date of this decision which will further be computed until finality of this decision
3. P 5,670.00 - salary differentials from September 28, 2002 to May 7, 2003
4. P 5,670.60 - ECOLA
5. P29,534.38 - overtime pay

P128,718.75 - TOTAL

6. P12,871.88 - 10% of the total award as and by way of attorney's fees.

P141,590.63 - TOTAL MONETARY AWARD

All other claims are ordered DISMISSED for lack of merit.<sup>[10]</sup>

On 21 June 2004, respondents appealed to the NLRC<sup>[11]</sup> essentially arguing that they were denied due process on the ground of improper service of summons and that the monetary award in favor of petitioner was without basis. Respondents' appeal was docketed as CA No. 040723-04.

The NLRC issued its Resolution dated 30 November 2004, sustaining the finding of the Labor Arbiter that petitioner was illegally dismissed:

Conclusively of first impression, [herein petitioner] filed her verified complaint on May 21, 2003, alleging among others, the fact of her dismissal on May 7, 2003. Thereafter, [petitioner] submitted her verified Position Paper which takes the place of her direct testimonies which substantiate her claim for illegal dismissal, stating with particularity the facts attending her illegal dismissal as follows:

"x x x. On May 7, 2003, while working, her attention was called to the Office by Management and accused her of quarreling with an employee of the Company. From there, and without giving her an opportunity to explain and defend her side, was sent home and prevented to work further. x x x"  
(Complainant's Position Paper, p. 1, Record, p. 13)

In this jurisdiction, it is the unwavering rule that the "onus probandi" to show that the dismissal of an employee from service is for cause and due process rests upon the shoulders of the employer. Failure to discharge this burden, the dismissal is tainted with illegality.

At bar, [herein respondents] failed to discharge this burden. A mere denial that they did not dismiss the [petitioner] is not a sufficient measure of the required proof to belie or controvert the latter's assertion that she was dismissed from service, much less, illegally; more so, when [petitioner] satisfactorily narrated the ultimate facts attending her dismissal.

In fine, for want of just or authorized cause and in the absence of due process, the dismissal of [petitioner] from service is therefore tainted with illegality.<sup>[12]</sup>

The NLRC did not give credence to respondents' argument that they were denied due process:

The issue interposed by the [respondents] that their right to due process was denied in the discernment of the present dispute is now rendered moot and academic as We give (sic) them the opportunity to explain and be heard through the judicious resolution of the substantive merits of this case:

"The party who has had ample opportunity to present its side of the controversy not only before the Labor Arbiter but also the NLRC on appeal, it cannot interpose lack of due process for what the fundamental law abhors is simply the absolute absence of opportunity to be heard."  
(CMP Federal Security Agency, Inc. vs. NLRC, 303 SCRA 99).<sup>[13]</sup>

The NLRC then determined the monetary awards to which petitioner would be entitled to:

Finding the dismissal of [petitioner] as illegal, she is entitled, under Art. 279 of the Labor Code, to reinstatement and full backwages. However, considering that reinstatement would not be in the interest of the parties as there is now of ruptured and strained relationship exists between them, it is more appropriate to award separation pay, in lieu of reinstatement.

In the absence of proof of payment on the [petitioner's] money claims as these were not substantially belied nor controverted by [respondents], the awards for salary differential, overtime pay, SILP and 13<sup>th</sup> month pay are hereby affirmed.

The claim for attorney's fees is granted based on salary differential, overtime pay and ECOLA pursuant to Article 111 of the Labor Code.

All other claims, for lack of factual or legal basis, are DISMISSED.<sup>[14]</sup>

In the end, the NLRC decreed:

WHEREFORE, the assailed decision of 16 March 2004 with modification on the award of attorney's fee is AFFIRMED.<sup>[15]</sup>

Respondents filed a Motion for Reconsideration of the 30 November 2004 Resolution of the NLRC.<sup>[16]</sup> They followed this up with a Supplemental Motion for

Reconsideration which only reiterated the arguments presented in their appeal.<sup>[17]</sup>

In a Resolution dated 28 February 2006, the NLRC denied respondents' Motion and Supplemental Motion for Reconsideration.<sup>[18]</sup>

Thereafter, respondents filed with the Court of Appeals a Petition for *Certiorari* under Rule 65<sup>[19]</sup> of the Revised Rules of Court, docketed as CA-G.R. SP No. 94616.

In its Decision dated 17 December 2007, the Court of Appeals held that respondent Perez was indeed denied due process based on the following ratiocination:

As above-quoted, service of summons in cases before the Labor Arbiters shall be served on the parties personally or by registered mail, provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court. In this case, since [herein respondent] Leslie Perez is the sole proprietor of Time Saver Laundry, service of summons must be made to her personally or by registered mail. The bailiff chose to serve the summons personally upon [respondent Perez]. However, said service of summons was invalid as it was not personally received by [respondent Perez] herself. The records show that the summons was received by one Alfredo Perez on June 7, 2003. It appears that Alfredo Perez is a co-employee of [herein petitioner]. x x x.

x x x x

Considering that there was no proper service of summons upon [respondent Perez], the Labor Arbiter did not acquire jurisdiction over his (sic) person. Perforce, the proceedings conducted and the decision rendered is nugatory and without effect.

x x x x

The lack of proper service of summons clearly deprived [respondent Perez] of her right to due process of law. She should have been afforded her day before the labor arbiter. She was deprived of her right to be heard and to present evidence which are essential ingredients of due process of law. While it is true that the Labor Arbiters and the NLRC are not bound by technical rules of evidence and procedure, such should not be interpreted so as to dispense with the fundamental and essential right of every person to due process of law.<sup>[20]</sup>

The dispositive portion of the assailed Decision of the Court of Appeals reads:

WHEREFORE, premises considered, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent, the instant petition is GRANTED. The assailed Resolutions dated November 30, 2004 and February 28, 2006, respectively, of public respondent NLRC are hereby declared NULL and VOID.<sup>[21]</sup>

Aggrieved, petitioner comes before us<sup>[22]</sup> with the following assignment of errors:

I. THE COURT OF APPEALS DECIDED THE CASE ON QUESTION OF LAW AND SUBSTANCE DETERMINABLE BY THE HONORABLE SUPREME COURT

II. THE COURT OF APPEALS IN DECIDING, HAS DEPARTED FROM THE USUAL AND ACCEPTED JUDICIAL PROCEEDINGS DEROGATORY TO THE RIGHTS OF PETITIONER.<sup>[23]</sup>

We determine that the fundamental issue for our resolution in the present Petition is whether there had been improper service of summons upon respondent Perez which renders the judgment by the NLRC against her null and void.

We rule in the negative.

The NLRC Rules governing the issuance and service of summons provide<sup>[24]</sup>:

Sec. 3. *Issuance of Summons.* Within two (2) days from receipt of a case, the Labor Arbiter shall issue the required summons, attaching thereto a copy of the complaint/petition and supporting documents, if any. The summons, together with a copy of the complaint, shall specify the date, time and place of the conciliation and mediation conference in two (2) settings.

Section 6. SERVICE OF NOTICES AND RESOLUTIONS. a) Notices or summonses and copies of orders shall be served on the parties to the case personally by the bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; provided that in **special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court;** Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail; provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; provided finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as maybe practicable, which shall be considered substantial compliance with Article 224(a) of the Labor Code, as amended.<sup>[25]</sup> (Emphasis supplied.)

Sec. 6. Proof and completeness of service. - The return is prima facie proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.<sup>[26]</sup>

Sec. 5. x x x

(b) The bailiff or officer serving the notice, order, resolution or decision shall submit his return within two (2) days from the date of service thereof, stating legibly in his return, his name, the names of the persons